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**BY REGISTERED POST**

Dear Mr Walker,

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”): DH WALKER v SALT UMBRELLA PROVIDENT FUND (“first respondent”) AND SALT EMPLOYEE BENEFITS (PTY) LTD (“second respondent”)**

**[1] INTRODUCTION**

- 1.1 This complaint concerns the first respondent’s refusal to pay the complainant’s withdrawal benefit following the termination of his employment, allegedly at the second respondent’s request to withhold the benefit pending a criminal investigation against the complainant for alleged fraudulent activities committed against the second respondent.
- 1.2 The complaint was received by this Tribunal on 25 September 2013. On 7 October 2013, an acknowledgement letter was sent to the complainant. On the same date, copies of the complaint were forwarded to the respondents requesting them to file their responses by 7 November 2013. On 7 November 2013, a joint response was

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received from the respondents. On 25 November 2013, a letter was sent to the complainant to reply to the respondents' response by 9 December 2013. On 18 February 2014, a reply was received from the complainant. On 2 April 2014, the respondents were requested to submit a response to the complainant's reply by 8 April 2013. On 16 April 2014, further submissions were received from the respondents. On 23 April 2014, further submissions were received from the complainant. No further submissions were received from the parties.

- 1.3 Having considered the written submissions before this Tribunal, it is considered unnecessary to hold a hearing in this matter. As the background facts are known to all the parties, only those facts that are pertinent to the issues raised herein will be repeated. The determination and reasons therefor appear below.

## **[2] FACTUAL BACKGROUND**

- 2.1 The complainant was employed by the second respondent on 15 February 2007 and was subsequently appointed as a Chief Executive Officer ("CEO") from 20 March 2012 until 20 June 2013. By virtue of his employment with the second respondent, the complainant became a member of the first respondent. The second respondent is the administrator of the first respondent.
- 2.2 Following the termination of his employment with the second respondent, the complainant applied for the payment of his withdrawal benefit from the first respondent. The complainant's withdrawal benefit remains unpaid due to alleged fraud and theft allegation by second respondent. The second respondent laid charges of theft and fraud against the complainant with the Commercial Crimes Unit of the South African Police Services ("SAPS") and the matter is still under investigation.

**[3] COMPLAINT**

- 3.1 The complainant submits that he completed his withdrawal claim form which he submitted together with his resignation form on 31 May 2013. He submits that prior to this, he had never received a benefit statement although monthly deductions were effected from his salary. He submits that apparently the authorisation to sign his withdrawal benefit is sitting with the Chief Financial Officer (“CFO”) of the first respondent after the current CEO refused permission to release the payment. The complainant submits that there is a labour dispute between himself and the second respondent which was referred to the Commission for Conciliation Mediation and Arbitration (“CCMA”).
- 3.2 The complainant submits that his benefit has not been paid for 4 months after he submitted his withdrawal claim form, no tax directive was granted and his funds were disinvested. He submits that the second respondent is poorly administering the first respondent and failing to offer client services. He states that the second respondent is using the labour dispute as grounds for interrupting the proper administration of the first respondent. He submits that there has been lack of communication from the second respondent regarding his withdrawal benefit.
- 3.3 The complainant seeks this Tribunal to order the payment of his withdrawal benefit together with interest and requests that the matter be referred to the enforcement unit of the Financial Services Board (FSB) for appropriate action.

Reply

*Judgments against the complainant*

- 3.4 The complainant in reply to the response submits that he wishes to

place the following on record. He submits that there is neither a civil nor a criminal judgment against him, as a result of a complaint lodged by the second respondent. He submits that he has also not signed an admission of wrong-doing to the second respondent. He submits that as a result, the first respondent has no basis to withhold his withdrawal benefit. He submits that although the second respondent has apparently laid criminal charges against him, he has not been contacted by the SAPS to be informed of such charges. He submits that he has a witness statement showing that Mr Eddie Strydom (“the current CEO”) paid an amount of R80 000.00 to have criminal charges laid against him. In support, he attached a copy of the witness statement. He submits that the said charges are without merit and malicious. He submits that it has been more than five months after his departure as CEO of the second respondent, it is three months after the docket was opened and he has to date not been contacted by the SAPS.

### *Locus standi*

3.5 The complainant submits that Cowan-Harper Attorneys (“Cowan-Harper”) who responded to his complaint and who purport to be responding on behalf of the respondents do not have the legal mandate to represent the respondents for the following reasons.

- The complainant submits that he has been in communication with the board of the first respondent, in which he was a former trustee, which indicated to him that the board has not appointed Cowan-Harper to act on its behalf. He submits that as former trustee, he is aware of the fiduciary duties of the first respondent and its independence from the employer. He submits that this Tribunal should request confirmation from the first respondent.
- He submits that similarly, the approval framework of the second respondent requires the board (of directors) of the second respondent, to approve any form of litigation and unbudgeted for consulting fees. He submits that, as the self-appointed CEO of the second respondent has stated that he has suspended the second respondent’s board, he has effectively removed his ability to appoint Cowan-Harper legitimately at their date of communicating

with this Tribunal on 7 November 2013.

### *Shareholder dispute and malicious actions*

3.6 The complainant submits that the rapid response and the voluminous submissions to his complaint is a reflection of a shareholders' dispute over commercial issues. He submits that the malicious behaviour is designed to impeach his character by the majority shareholder, aided by Cowan Harper, who represents in its various guises African Unity, SALT Invest Holdings, Salt Investment No. 3, the second respondent and now apparently the first respondent. He submits that Cowan-Harper are not themselves bystanders in these actions as their senior partner Mr Lennard Cowan is now appointed a board member of the second respondent and Salt Investment No. 3 and acts as attorney of record. He has also voted himself into the board of Salt Investment No.3 on 29 April 2013, despite being conflicted.

### *Summary of response to Cowan Harper Attorneys*

3.7 The complainant reiterates that Cowan-Harper Attorneys have no authority to represent the first respondent, as no resolution was taken by the board of the first respondent. He submits that similarly, Cowan-Harper Attorneys has no authority to represent the second respondent as the second respondent's board was suspended by the court order of 10 May 2013. Therefore, the board that appointed it was not properly constituted. The complainant categorically denies the respondents' allegations in their responses as appears in the following paragraphs, 2, 3, 11, 15, 16, 18, 22, 24, 30, 31, 33, 35 and 36.

3.8 The complainant denies the respondents' allegations and offers explanation on the following paragraphs:

4 That he withdrew his notice and left on 10 June 2013 as a result of the continued transgressions of the FAIS Act by the current CEO and his refusal to abide by the court order and work jointly with him in

- running the company.
- 5 That he was provided with comprehensive reports befitting a non-executive director. He submits that no board resolutions were passed that he did not comply with.
- 7 That following his initial resignation of 3 June 2013, he submitted a notice on 10 June 2013 given the intolerable working conditions and departed immediately to file a constructive dismissal dispute at the CCMA.
- 8 That no suspension hearing was conducted. He submits that Strydom informed him that he has decided to suspend him without any authority from the board.
- 9 That his motivation for leaving was the untenable behaviour of Strydom in transgressing the FAIS Act and undermining him at every turn.
- 10 That his employment ceased on 10 June 2013.
- 12 That charges laid against him were as a key individual and he had already been removed from the FSB register when the disciplinary hearing was convened. He submits that the hearing was a kangaroo court with the aim of dismissing and debarring him.
- 17.1 That payment was strictly in accordance with the policy and appears in the minutes of the Remuneration Committee as incentive bonus.
- 17.2 That this is incorrect and that any credits that were passed were referred to both the financial manager and auditors.
- 19 That allegations raised by Strydom are entirely without foundation.

3.9 The complainant takes note of the respondents' submissions on the following paragraphs, 20, 26, and 27. He responded to the following paragraphs as follows:

- 6 That Strydom used his appointment as joint CEO for one purpose, which is to undermine his authority and prevent the continued tenure as CEO and denies the rest of the allegations therein.
- 10 That his employment ceased on 10 June 2013.
- 13 That his labour dispute with the second respondent was referred for arbitration to the CCMA. He submits that his referral was mysteriously closed at the CCMA as he had not copied the employer, despite the referral for arbitration being sent to both CCMA and Strydom via-email and facsimile. He submits that this has since been rectified by the CCMA and shows the extent to which Strydom was willing to go

to perjure himself.

14 That this constitutes malicious debarment and is subject to current litigation between himself and the FSB. He submits that unsurprisingly, the second respondent has vigorously opposed his application.

17.3 He submits that his wife was contracted to assist the second respondent and her travel expenses were incurred with the full knowledge of Strydom and the board. He submits that these facts appear in the respondents' submission attached to the charges and board minutes of the second respondent under conflict of interests. He submits that the board of the second respondent had sanctioned in March 2013 that as a senior executive, the company had for years booked both his business and personal travel. He submits that was recovered on presentation on presentation on a regular basis as is shown in the documents Strydom provides. This information is in the documents before SAPS and this Tribunal without mentioning that there are debits and credits.

21 The first respondent currently does not have a properly constituted board of trustees and that both the administration manager and Strydom were requested to finalise the payment as detailed in his complaint.

23 The effective date of withdrawal is 31 May 2013. This is again evidence of his departure.

25 This is an admission by the second respondent that statements were not provided to members

28 No court has directed that his funds should be retained;

29 No board resolution was passed by the first respondent to allow the second respondent to retain such funds. To date no court of law has directed that the second respondent may recover such monies that have allegedly been misappropriated. This is a tactic by the second respondent and the allegations are without foundation.

32 No formal communication was addressed to him by the second respondent besides the response to this Tribunal which was prompted by his complaint.

3.10 The complainant submits that this Tribunal should award punitive costs against the second respondent. He submits that it is clear that the current CEO has tried to hijack the board of both the first and second respondents to fulfil his nefarious intentions and is abusing the process of this Tribunal. The complaint submitted further that he received legal

assistance in submitting his claim from Mr David GERALD of Bowman Gilfillan Attorneys.

#### **[4] RESPONSE**

4.1 A response was submitted by Cowan-Harper on behalf of both respondents. It submits that the complainant has failed to take this Tribunal into its confidence as he chose to deliberately mislead this Tribunal in his complaint. It states that their submissions will reveal that the complainant failed to disclose crucial information in his complaint about the reason of the withholding of his benefit following a disciplinary hearing.

##### *The Background*

4.2 The respondents submit that in terms of clause 17.3.2 the shareholders' agreement of the shareholder of the second respondent, the complainant was appointed as CEO of the second respondent on 20 March 2012. In his capacity as the initial CEO of the second respondent, the complainant conducted the affairs and was in control of the affairs of the second respondent from 20 March 2012 until 6 June 2013 and subsequent dismissal on 20 June 2013 following a disciplinary hearing.

4.3 The respondents submit that towards the end of 2012, the majority shareholders requested information about the affairs of the second respondent from the complainant, the complainant refused, failed or neglected to provide the said information. It states that the complainant ignored board directions and decided to become obstructive in allowing the majority shareholder access to how the business of the second respondent was conducted. It contends that this resulted in the current CEO being installed as the joint CEO at the direction of the High Court, South Gauteng in terms of two court orders.

- 4.4 It avers that after the joint CEO was installed on Monday 13 May 2013, he conducted an investigation into the affairs of the second respondent which revealed that the affairs of the second respondent had not been conducted in a lawful manner and that the complainant had committed various acts of misconduct, dishonesty, theft and/or fraud. The specifics of these misconducts are contained in the disciplinary charges in terms of which the complainant was found guilty before an independent chairperson. Criminal charges were laid against the complainant with the Commercial Crimes Unit.
- 4.5 Following the appointment of the joint CEO, the complainant resigned as CEO and director of the second respondent on 3 June 2013 with one month's notice. On 6 June 2013, a suspension hearing was convened in which the complainant was suspended on full pay pending a disciplinary hearing on 13 June 2013. On 10 June 2013, the complainant attempted to resign from the second time during his notice period. In terms of the law a person remains an employee during the notice period. On 12 June 2013, the second respondent rejected the second resignation. On 12 June 2013, the complainant referred a dispute of unfair dismissal to the CCMA on the basis of constructive dismissal. The complainant has taken no further steps to have the matter arbitrated at the CCMA.
- 4.6 The respondents submit that the labour dispute is not related to the non-payment of the complainant's withdrawal benefit. On 13 June 2013, a disciplinary hearing was held at which the complainant was found guilty of all charges levelled against him and dismissed. In support, the respondents annexed copies of the charges at the disciplinary hearing. It submits that as a result of the disciplinary finding, the complainant was debarred as the second respondent's key representative in terms of section 14 of the Financial Advisory and Intermediary Services Act, 2002 ("FAIS Act" ). The complainant

attempted to have his debarment lifted which was objected to by the second respondent. No further steps were taken by the second respondent.

*Misconduct committed by the complainant and the criminal charges*

4.7 The respondents submit that they the filed criminal charges against the complainant at the South African Police Services (“SAPS”), in which among others they allege the following, that the complainant:

- Stole an amount of R1 688 726.13 and a further amount of R145 060.83 by paying himself a bonus and a 13 cheque during May 2013 which bonus and 13 cheque were not authorized by the remuneration committee and/or the board of the second respondent.
- Defrauded the second respondent by causing two loan accounts in the books of account of the second respondent reflecting a loan to the complainant in amounts of R165 031.36 and R142 515.80 to be unlawfully deleted from the books of account of the second respondent without the complainant repaying the said loans.
- Stole funds from the second respondent, alternatively defrauded the second respondent by booking and undertaking aeroplane travel on the accounts of the second respondent for unauthorised and impermissible flights for his wife and children. The complainant caused the travel expenses of the said flights to be charged to the second respondent in the amount of R155 391.14.

4.8 The respondents submit that in the circumstances, it is clear that as a result of the complainant’s dishonesty, misconduct, theft and fraud, the second respondent suffered damages in an amount that far exceeds the withdrawal benefit currently being withheld in terms of section 37D of the Act, which is an amount of R195 967.15 after tax.

Further submissions

4.9 At the request of this Tribunal, the respondents made further submissions in response to issues in the complainant’s reply previously not addressed. The respondents through their attorneys of record

submit that their response to this Tribunal was copied to the complainant's email address. They submit that they fail to understand why he only received the pack on 5 February 2014. The respondents submit that they experienced logistical issues in obtaining some of the information requested by this Tribunal for reasons to follow.

4.10 The respondents submit that prior to responding to issues raised by this Tribunal, they wish to place the following information on record:

- That following the dismissal of the complainant, as the CEO and the responsible person for the second respondent in its capacity as the administrator, it was practically impossible for the second respondent to determine who on behalf of the second respondent could lawfully communicate with a properly constituted board of the second respondent and for the first and second respondents to have decisions taken, ratified.
- During the interim phase, the management of the second respondent and the Principal Officer of the first respondent, who is an independent trustee and officer, gave instructions to Cowan-Harper Attorneys to respond to this complaint on their behalf.
- In approximately June 2013, the management of the second respondent, being Mr Eddie Strydom, Mr Andries Zietsman, Wayne Muller met with the Principal Officer of the first Respondent, Ms Estie Van Coller, to address the issue of misappropriation of funds by the complainant and requested that the first respondent withhold payment of the complainant's Provident fund money until the investigation could be done to determine the extent of the misappropriation. The Principal Officer agreed to postpone the payment of the complainant's benefit until the investigation was completed.
- The exercise of the rights of the second respondent was addressed in the initial response provided on behalf of the respondents on 7 November 2013, in paragraphs 28 and 30 thereof.
- At all times the Second respondent and the Principal Officer had advised the Attorney of record that the decision to withhold payments of the complainant's benefit was addressed, based on the evidence before the parties.

- The Cowan-Harper submits that they are currently advised that there may have been some confusion as to whether or not such a decision was in fact taken by the first respondent's board as the minutes of the meeting of the first respondent have not been signed by the chairperson of the board. They submit that whilst they are informed that the issue of misappropriation of funds was discussed, it is not clear whether the first respondent took a decision to ratify the Principal Officer's decision.
- A round robin resolution for the first respondent's resolution for the first respondent's board was circulated during the course of last week to ratify the decisions taken previously. However, whilst the Principal Officer, the sponsor trustee and the two independent Trustees signed the resolution, the chairperson of the first respondent has not signed although he had been informed of the urgency.
- In light of the fact that there are no approved minutes ratifying and confirming the decision taken by the Principal Officer to withhold, the respondents have convened a meeting in terms of their rule 3.7.2 of the first respondent's rules to address the issue and provide the resolutions once the meeting is held.
- The respondents submit that the request for a postponement for this purpose and plead for indulgence of this Tribunal.

4.11 The respondents submit that in light of these facts they submit an interim reply to the questions raised by this Tribunal, which is as follows:

- The round robin resolution signed by four of the Trustees except the chairman, which confirms the decision to defend the claim by the complainant and confirms the appointment of Cowan Harper as attorney of record and confirms actions taken in terms of the prior oral mandate.
- That there may be grounds upon which the chairman may have to recuse himself from such a discussion and considering that four of the five trustees have already assented to the resolution, it is inevitable that it will be passed. In support, a copy of the said resolution is attached ratifying all and any actions which may have been taken, by Eduard Strydom and Lennard Cowan from 2 April 2013 in protecting the rights of the second

respondent.

- To the extent that the complainant may have attempted to create a dispute as to which persons constitute the board of directors of the second respondent, the respondents attached a judgement by Justice Harms sitting as an arbitrator in the Arbitration Foundation of South Africa in relation to who the directors of the second respondents are at the specific dates.
- The case number under which the criminal complaint is 560/11/2013 at the Commercial Crimes Unit being investigated by Captain Classen.

4.12 The respondents made further submissions to the issues raised by the complainant in his reply of which for reasons to follow shall not be repeated. Furthermore, the respondents annexed to their submissions among others the Arbitration Awards of 2 December 2013 and of 19 February 2014 by Justice Harms, the resolution sought to be taken by the board of the second respondent on a meeting which was to be held on 5 March 2014, the complainant's benefit statement and others.

## **[5] DETERMINATION AND REASONS THEREFOR**

### *Introduction*

5.1 The issue for determination is whether or not the first respondent is entitled to withhold the complainant's withdrawal benefit.

### *Request for an extension by the first respondent to make further submissions*

5.2 Following the receipt of the complainant's response, this Tribunal requested, on 2 April 2014, the respondents to submit proof of their respective letters of authority appointing Cowan-Harper as their legal

representatives in this dispute with the complainant, together with a copy of the minutes of the first respondent where the decision was taken to withhold the complainant's benefit and a case number of the criminal case lodged with the SAPS against the complainant. The respondents were requested to deliver their response to this Tribunal by 8 April 2014. On 8 April 2014, a request was received from Cowan-Harper to deliver the said documents on 11 April 2014, which was granted. On 11 April 2014, a further request was received from the second respondent to deliver the said response on 16 April 2013. On 16 April 2013, an 'interim' response was delivered with a request for a further extension until such time as the first respondent's board can meet to ratify the legal mandate initially granted to Cowan-Harper by the Principal Officer. It is this request for an extension that is being considered. This Tribunal declines this request for a further extension for reasons to follow below.

### *Locus standi*

- 5.3 The complainant in his reply raised the question of *locus standi in judicio* or legal standing of Cowan-Harper to represent the respondents. He submits that Cowan-Harper does not have legal standing to represent the first respondent because no board decision was taken to litigate and consequently to appoint Cowan-Harper as its legal representative. He submits further that Cowan-Harper does not have legal standing to represent the second respondent as the proper internal processes of the second respondent for deciding on litigation were not followed and no authority was granted by the second respondent's board. The first respondent submitted that Cowan-Harper was properly appointed by the first respondent in that instructions were issued by the Principal Officer, who is also an independent trustee of the first respondent, to represent the first respondent. The second respondent submitted that instructions were issued by the current CEO, following the mandate granted to him on the arbitration award of Judge

Harms, to Cowan-Harper to represent the second respondent.

- 5.4 The evidence requested and proof of mandate should be a fairly easy matter to address by both respondents. Minutes of the board meetings where such a decision was taken are usually sufficient to confirm the existence of such authority (see *Tattersall and Another v Nedcor Bank Ltd* 1995 (3) SA 222 (A)). However, Cowan-Harper on its own evidence admits that it is not clear whether such decision was taken by the first respondent's board. Hence a decision was taken to have the issue decided by a round robin meeting following the request of this Tribunal. It appears that this attempt did not succeed as the chairman of the board of the first respondent, for reasons not stated, decided to withhold his assent to the round robin resolution. As a result, as at the time of this determination no authority has been granted as the decision of the Principal Officer has not been ratified by the board of the first respondent which is required were no authority was initially granted (see *Merlin Gerin (Pty) Ltd v All Current and Drive Centre (Pty) Ltd And Another* 1994 (1) SA 659 (C)). In the event, as far as the matter relates to the first respondent, Cowan-Harper has no legal authority to represent the first respondent.
- 5.5 As regards the second respondent's mandate, the complainant indicates that the decision to litigate needs to be authorised by the board of the second respondent in terms of its approval framework policy, where any form of litigation and unbudgeted for consulting fees are to be undertaken. The complainant submits that the reason that the current CEO is unable to do so is that he suspended the board of the second respondent, which effectively removes his powers to appoint Cowan-Harper until such time that a new board is appointed. The second respondent disputes that it has no authority to appoint Cowan-Harper as its legal representative in this matter. In support it annexed minutes of the meeting of the its board held on 5 March 2014 in which authority was granted to the current CEO to pursue legal actions

against the complainant and other parties and in which Cowan-Harper is appointed as attorneys of record for this purpose. On the evidence submitted, this Tribunal is satisfied that even though it appears that no authority was granted initially when the response to the complaint was received from the second respondent on 3 November 2013, such lack of authority has subsequently been ratified by the board of the second respondent on 5 March 2014. As a result, Cowan-Harper has legal standing to appear on behalf of the second respondent (see the *Merlin Gerin* matter above).

*Effects of the absence of locus standi for the first respondent*

- 5.6 This Tribunal's finding above that Cowan-Harper has no legal authority to respond on behalf of the first respondent, effectively means that whatever submissions were purportedly made on behalf of the first respondent cannot be assigned to the first respondent. As a result, no response was received from the first respondent. However, what this Tribunal cannot ignore is the circumstances surrounding this failure by the first respondent to respond to the complaint despite ample opportunities to do so as it has a bearing on whether this Tribunal should grant it the opportunity to ratify the lack of mandate or whether to afford it this opportunity afresh.
- 5.7 On the submissions made, what appears to be the reason for the failure of the first respondent to submit its own response was because its board forsake its right decide on behalf of its members to the second respondent. This was despite the fact that the two entities had conflicting interests in the issue at hand as regards the complainant. In that, on the one hand, the second respondent was to present its case as to why the complainant's benefit should be withheld to the first respondent and on the other hand, the first respondent was to consider and decide whether or not such a request could be granted in terms of its rule 6.11. The evidence as submitted by Cowan-Harper in its further

submissions shows that the Principal Officer when informed in June 2013 of the intention by the second respondent to have the complainant's benefit withheld, not only decided on the issue, which she had no right to do, but endorsed the second respondent's intention to investigate. As a result, the request to this Tribunal for an opportunity to allow the first respondent to ratify its legal mandate with Cowan-Harper would have been a perpetuation of the wrongful state of affairs of the two entities appearing as single entity in the face of the conflicting interests.

- 5.8 As to whether the first respondent should be afforded a fresh opportunity to respond, the answer to this question lies on the same evidence provided by Cowan-Harper relating to the events of June 2013. It is clear therefrom that the decision to withhold the complainant's benefit was never taken by the first respondent's board for the simple reason that no formal application was submitted by the second respondent to the first respondent to withhold the complainant's benefit and as such, no decision had been taken eight months after the complainant exited the first respondent. In the event, it will be a travesty of justice for this Tribunal to allow the first respondent to continue to withhold his benefit when no formal application to withhold was submitted by the second respondent.

#### *The ruling*

- 5.9 It is not necessary for this Tribunal to further deliberate on the merits of whether the withholding of the complainant's benefit by the first respondent is justified in the absence of submissions by the first respondent, the apparent failure by the second respondent to formally put its case for withholding before the first respondent's board for consideration and in light of this Tribunal's finding above. In the event, the appropriate relief is that which has the effect of placing the complainant in the position he would have been had the first

respondent paid his benefit when his employment was terminated on 10 June 2013 (see *Orion Money Purchase Pension Fund (SA) v Pension Funds Adjudicator and Others* [2002] 9 BPLR 3830 (C) at 3839F-G *Mabale v Feedmix Provident Fund and Others* [2008] 1 BPLR 29 at 37E-F). As there was no legal basis for the first respondent to withhold the complainant's benefit from June 2013, punitive interest is awarded at the rate of 15.5% is payable to the date of payment.

- 5.10 The complainant also raised the issue of legal costs in which he submits the withholding of his withdrawal benefit is a malicious act on the part of the second respondent's current CEO to fulfil his nefarious intentions and is an abuse of the Adjudicator's process. He relies in this respect in the determination of *Osborne v MM Retirement Annuity Fund and Others* [2008] 3 BPLR (PFA). This Tribunal finds that the complexity of the matter required the assistance of a legal representative, especially considering that the first and second respondents purportedly had legal representation. However, although the actions of the second respondent appeared malicious they were not lacking in legal merit as to be regarded as frivolous to justify an award of costs at attorney and own client's scale as requested by the complainant. As a result, an award of costs on a party and party scale is granted on the tariff of the High Court and should any dispute arise thereto, it should be referred to the taxing master of the High Court for resolution.
- 5.11 This Tribunal will also be failing in its mandate as a *quasi-judicial* body if it fails to bring to the attention of the Registrar of Pension Funds ("the Registrar") the level of dereliction of duties and neglect by the board of the first respondent of its rules (or lack of understanding thereof) as evidenced by the first respondent's board in this matter and the utter disregard by the second respondent as an administrator in the pension fund industry of the rules and the laws applicable in its sphere of business. In this respect, a copy of the file and this determination

regarding this dispute shall be made available to the Registrar for her consideration.

**[6] ORDER**

6.1 In the result, the order of this Tribunal is as follows:

6.1.1 The first respondent is directed to pay the complainant his withdrawal benefit, less any deductions permitted in terms of the Act, together with interest at the rate of 15.5% from 1 July 2013 to date of payment within one week the date of this determination; and

6.1.2 The first and second respondents are directed jointly and severally to pay the complainant's costs of suite on a scale as between party and party calculated in accordance with the High Court tariff within three weeks of this determination.

**DATED AT PRETORIA ON THIS 29<sup>TH</sup> DAY OF APRIL 2014**

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**MA LUKHAIMANE**  
**PENSION FUNDS ADJUDICATOR**

**Section 30M Filing: High Court**

*Parties unrepresented*

